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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,653	09/30/2003	Marc E. Feinberg	ETH5092	4786
27777 PHILIP S. JOH	7590 10/30/2007 INSON	EXAMINER		
JOHNSON & J	OHNSON	RYCKMAN, MELISSA K		
ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			ART UNIT	PAPER NUMBER
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			10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensives or time may be available under the previous of 37 CFR 1.13(d). In re-overs, however, may reply be time the set of this communication of 17 CFR 1.13(d). In re-overs, however, may reply be time the set of this communication of 17 CFR 1.13(d). In re-overs, however, may reply be time the set of this communication. Failure to receive the specifical above, the maximum statutory period will apply and will expire SX (6) MONTHS from the mailing date of this communication. Failure to receive the mailurement. Set 37 CFR 1.70(d)). Any reply reserved by the Office later then three months after the mailing date of this communication, even if timely filed, may reduce any senter gleater them adjustment. Set 37 CFR 1.70(d)). Status 1) Responsive to communication(s) filled on 23 August 2007. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 4.6, 8, 14, 22, 27-30, 38-42 and 48-50 is/are pending in the application. 4) Of the above claim(s) is/are allowed. Claim(s) is/are allowed. Claim(s) is/are allowed. Claim(s) is/are rejected. 7) Claim(s) is/are rejected to by the Examiner. 10) The specification is objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. Application Papers 9) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in absyance. See 37 CFR 1.185(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office		/ / 1					
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12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) 5) Notice of Informal Patent Application	11)∐ The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form P1O-152.				
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Application/Control Number: 10/674,653

Art Unit: 3773

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 4-6, 8, 38-42 and 46-48, drawn to a tissue approximation device with a second surface rotatably coupled to the distal end of each of the elongate arms by a ball and socket connector, classified in class 606, subclass 150.
- II. Claims 14, 22, 27-30, 36, 37, 49 and 50, drawn to a tissue approximation device with the connector of the adhesive pad is a rod and sleeve, classified in class 606, subclass 150.

Inventions I and II are directed to related tissue approximation devices. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed invention I is not capable of being used with invention II. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

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Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR

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